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2005

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
Seeks Comment on Proposals to Modify)	
the)	
Commission's Rules Relating to High-		
Cost		
Universal Service Support		

**Reply Comments of Montana Independent
Telecommunications Systems (MITS)**

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I. Introduction

As noted in our initial comments, Montana Independent Telecommunications Systems (MITS) is a trade association of small, rural telecommunications companies operating primarily in Montana but also serving parts of North Dakota and Wyoming.¹ Our smallest member serves approximately 1,000 access lines. Our largest member serves approximately 30,000 access lines. Our service areas are among the most sparsely populated in the Nation. In fact, most of our members serve on average less than two access lines per square mile. Despite this challenge, we have tried to be as creative as possible in linking our individual networks together and forming partnerships to offer the widest possible array of wireless and advanced services to supplement and complement our basic local and long distance wireline voice services. Competition has begun to develop in our service areas. However, for many of our subscribers, we remain their only alternative for voice services, whether those services are provided over wireline or wireless media. When it comes to broadband services, we are the only alternative for most subscribers in our service areas.

¹ MITS' members are: Central Montana Communications, InterBel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, Southern Telephone Company and Triangle Telephone Cooperative Association

For the foregoing reasons, any change to the operation of the Universal Service Fund is of critical importance to us and to our subscribers. Without support from the Universal Service Fund, we would find it very difficult to provide access to affordable telecommunications services and to provide services in our rural areas that are comparable to services in urban areas at comparable rates.

II. Large-scale changes to the current Universal Service Fund program are unnecessary. Smaller-scale changes that are well-focused should be sufficient to address the concerns of the Joint Board and the FCC.

In reviewing the initial comments of others, we were persuaded that the current system for operating the Universal Service Fund works reasonably well. Our own initial comments stated that “[t]he current Universal Service Fund system is not so irrevocably broken that [massive] changes ... are in order.”² Similarly, CenturyTel stated: “Rather than discard the current universal service framework as suggested in these four proposals, focused initiatives aimed at fixing the pressing problems in the universal service framework are required.”³ This sentiment was shared by a number of those filing initial comments.⁴

² Initial Comments of MITS, p. 11

³ Initial Comments of CenturyTel, Inc., p. 4

⁴ SEE, e.g., Initial Comments of Balhoff & Rowe, p. 56, Initial Comments of Fairpoint Communications, p.4, Initial Comments of the National Telecommunications Cooperative Association, generally, Initial Comments of OPASTCO, p. 2, Initial Comments of Minnesota Independent Coalition (which we believe spoke for many of those who represent rural interests in stating on pages 8 and 9 of their initial Comments: “The Proposals all appear to assume that the Commission has generally accepted the idea that existing rural Universal Service support mechanisms need to be significantly changed (with the details of such

Assuming for the moment, then, that developing focused initiatives aimed at fixing pressing problems is a better way to approach reform of the Universal Service Fund than the four Proposals, what kinds of initiatives should be explored? MITS found what it considered to be a number of promising candidates among the various sets of initial comments. For example, the comments of Balhoff and Rowe listed several areas in which improvements could be made within the existing USF framework. Specifically, MITS agreed with the following recommendations in the Balhoff & Rowe comments:

- The Joint Board should focus on supporting robust network platforms, capable of providing rural areas with “reasonably comparable” services as well as rates to those in urban areas.
- The Joint Board should support prompt implementation of a reporting and enforcement regime as part of a comprehensive network-focused approach.
- Reform should be based on a correct identification of cost drivers and should seek to reconcile support with costs.
- The Commission should take additional steps to ensure program discipline, accountability and customer value in the CETC program similar to that already present in the rural rate of return program
- The Joint Board and Commission should support efforts of NARUC and state

changes to be largely delegated to the States) ... To the contrary, the Commission has not determined that significant changes to existing rural Universal Service support mechanisms are warranted, or taken any action with respect to the various proposals for ICC reform. Further, until the Commission does indicate a direction in the ICC reform proceeding, radical proposals for reform of the Universal Service mechanism are premature because the implications of the Proposals cannot be determined.

commissions to implement meaningful ETC certifications and review.

- Support for rural rate of return carriers should generally continue to be based on embedded costs.
- The high cost fund should not be capped or frozen as variously suggested.
- The Joint Board should support efforts by the Chairman, the Commission and Congress to broaden and stabilize the contribution base for universal service.⁵

Additionally, MITS supports the following specific recommendations by CenturyTel:

- The Joint Board should recommend immediate action to expand the contribution base for universal service to include all service providers that use our national telecommunications infrastructure, now and in the future.
- The Joint Board should recommend that universal service support the entire rural network, including when it is used for advanced services. This means ensuring both adequate loop support and support for backhaul capacity to link rural communities to the Internet.
- The Joint Board also should recommend immediate modifications to the Commission's safety-valve mechanism in order to encourage investment in acquired exchanges in the first year following the acquisition.

In MITS' view, taking the foregoing actions would do much to ensure the long-term viability of the Universal Service Fund as well as improving its operation and its results. Further, all of this could be accomplished without

⁵ Initial Comments of Balhoff & Rowe, pp. 56-58

the massive and likely quite painful restructuring called for in the four Proposals.

III. The state allocation mechanism and block grant system would gravely endanger the ability of carriers to offer affordable rates in the areas that need them most.

As stated in our initial comments, MITS is greatly concerned about the state allocation methodologies (SAMs) and block grant systems set forth in the four Proposals. First, we foresee a potential political “gold rush” as universal service funds are allocated among the states. Further, once the allocation percentages are established, criticism will be inevitable from representatives of the various states, who will sooner or later complain that their state is not getting its fair share of the funding.

However, even assuming that the states could all agree on a fair distribution of the funds among themselves, the division of funds by each state’s PSC among the ETCs within each state is likely to cause its own enormous problems. MITS identified a couple of those problems in its initial comments: 1) the fact that as a general rule most state commissioners lack significant expertise with respect to the universal service program, and 2) the lack of financial and human resources from which many if not most commissions suffer but which is particularly acute in states like Montana that have large land areas coupled with a very small tax base. Such states will find it very difficult to hire the new staff necessary to calculate how to

spread what may be a fixed amount of universal service support over an ever increasing number of eligible telecommunications carriers (ETCs).

Other commenters identify additional problems. For example, OPASTCO notes that it will take time to develop guidelines for the states to use in determining how funds are to be distributed within the state. During that time, “[v]ery few rural carriers would be willing to invest in their network without knowing whether or not they will continue to have access to adequate cost recovery through federal high-cost support. Moreover, the capital markets will be reluctant to lend to rural ILECs without any reasonable assurance that they will be capable of repaying the loans.”⁶

Taking OPASTCO’s argument a step further, MITS notes that if a Proposal is adopted that freezes fund growth at some point, there will be no way for rural ILECs or lenders to know how many additional ETCs may be designated in a particular state after the freeze. Nor will rural ILECs or lenders know much funding those new ETCs may pull from existing ETCs in order to keep the overall funding level flat. In that event, the same chilling effect on lending and investment in rural telecommunications networks would occur.

Balhoff & Rowe take a “delicate” approach to describing the limitations of state commissions, stating that: “The SAM Plan ... does not appear to be consistent with an emphasis on core competencies (speaking of the core

⁶ Initial Comments of OPASTCO, p. 9

competencies of state commissions)”⁷ However, Balhoff & Rowe go on to note (as do a number of commenters) that the state allocation methodology would require multiple state proceedings and therefore “would not achieve the uniform decisions considered desirable by the Joint Board. Indeed uniformity would seem at odds with the justification for SAM.”⁸

The block grant system would also place enormous administrative burdens on both the FCC and the state public utility commissions. OPASTCO notes that with respect to one of the plans, the FCC would have to establish individual rate benchmarks for all 50 states.⁹ All 50 states would then have to develop plans for distributing support to the ETCs in each state. Given the critical nature of those revenues to most small, rural ILECs there is a very real possibility that individual state plans will be challenged in court, further draining the limited resources of state commissions.¹⁰

For all of the foregoing reasons, MITS continues to believe that the current, centralized USF distribution methodology is preferable to the SAM proposals. The centralized approach is well-established, more efficient and more predictable. Further, it does not penalize states that have little financial or human resources.

⁷ Initial Comments of Balhoff & Rowe, pp. 49 & 50

⁸ Id. at p. 51

⁹ Initial Comments of OPASTCO, at p. 10

¹⁰ Id. at pp. 9 & 10

IV. The national local benchmark rate set forth in the Proposals is inconsistent with the universal service goals of the 1996 Act and ignores fundamental rate-making principles such as “value-of-service.”

Most of the Proposals contain a provision that requires recipients of Universal Service Fund support to charge their end users a rate for local service that is, at a minimum, equal to 125% of the national average local rate charged in urban areas (known as the “benchmark rate”). Usually, if the carrier charges a rate lower than the benchmark rate, the financial support from the USF to the carrier will be limited to the amount the carrier would have received had the carrier in fact charged the benchmark rate. This is referred to as “imputing” the benchmark rate.

While MITS has not gathered empirical evidence that folks living in rural areas have significantly lower average incomes than those in urban areas, we are confident in making that assertion based on what we have seen in Montana. Certainly, there are a few movie stars or professional sports figures with homes in the most scenic parts of our state, but their numbers are dwarfed by the number of folks that “just get by” in small towns across rural Montana. For every affluent, rural ski resort community there are hundreds of communities made up of a small school, a smaller post office, half a dozen tiny businesses, a few dozen year-round residents and perhaps a dozen more who move to town from the farm for the winter.

Assuming that the national benchmark local rate would be somewhere in the mid-\$30s per month, the vast majority of those subscribing to the local

telephone service provided by MITS' members would see a very significant local rate increase. This assumes that the SLC is included in the mid-\$30s rate but that local taxes and fees such as those that are imposed to support 911 programs are not. If the SLC were added, the rate increase to such subscribers would be enormous. In either case, MITS would argue that such a rate would be inconsistent with the universal service principles that rates and services in rural and urban areas should be reasonably comparable and that rates in rural areas should be affordable.¹¹

The reason MITS believes such rates are not comparable as required by statute is not only because the national benchmark rate would be anywhere from \$10 to \$20 per month higher than current local rates for the subscribers of most small rural telephone companies in Montana, but also because the local calling areas for most of our subscribers are so small in comparison to the local calling areas enjoyed by those in urban areas. For example, a person making a local call in Chicago can presumably call more than a million people without incurring toll charges. In many small towns across Montana, a caller can reach less than 200 other numbers in his or her exchange as a local call. In such cases, rarely is there a doctor, lawyer, accountant, school, hospital or police department among those 200 numbers. Calls to such folks (as to anybody outside those 200 numbers) would be toll calls and would therefore cause the subscriber to incur additional per-minute charges on top of the national benchmark local rate. The Chicago subscribers

¹¹ 47 U.S.C. §254

could presumably contact literally thousands of doctors, lawyers or accountants and hundreds of hospitals, schools or police officers as a local call. For these reasons, the \$10 to \$20 difference can quite quickly become a much larger difference, depending on the number and duration of the toll calls made by the subscriber in the smaller calling area.

As to affordability, MITS finds CenturyTel's description to be useful and succinct: "No uniform rate benchmark could take into account the variations in affordability among rural communities across the country. Any rate benchmark must account for local factors including penetration, household income, calling scope and other economic and demographic factors that vary greatly throughout the United States."¹²In the absence of very significant evidence from an independent source in support of the affordability of the 125% rate, the rate appears to be completely arbitrary

Further, MITS is troubled by the fact that "reasonably comparable" seems so clearly established in the minds of many to be 25% *higher* than the national urban rate. If true comparability were being sought, why wouldn't the starting place for rates be the *same* for urban and rural? For example, if the evidence showed that incomes in rural areas were generally lower in rural areas and the cost-of-living was about the same as in urban areas, shouldn't a reasonably comparable rate in rural areas be *less* than the average urban rate. Again, until a thorough, independent examination has been conducted, the 125% rate appears completely arbitrary.

¹² Initial Comments of CenturyTel, p. 19

V. Conclusion.

MITS is persuaded that making sensible, incremental changes to the current USF system is preferable to the sweeping changes advocated by the four proposals currently before the Joint Board. The state allocation methodologies would likely cause unnecessary political divisions between the states. Further, state commissions are mostly faced with limited financial and human resources (and since this appears to particularly be the case in rural states that are highly dependent on universal service support). Therefore, they are ill-equipped to take on the additional tasks imposed upon them by the various proposals, in terms of establishing distribution methodologies and handling disputes. Finally, the affordability benchmarks established by the various proposals appear to us to be unaffordable and not reasonably comparable between urban and rural subscribers. To the contrary, they appear completely arbitrary. For this reason, MITS cannot endorse any of the four Proposals to reform the Universal Service Fund. We do, however, recognize that there is room for improvement and identify a number of those improvements early in these reply comments.

RESPECTFULLY SUBMITTED This 31st day of October, 2005.

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On Behalf of:

Central Montana Communications
InterBel Telephone Cooperative
Nemont Telephone Cooperative
Northern Telephone Cooperative
Project Telephone Company
Southern Telephone Company
Triangle Telephone Cooperative Association